



General Assembly

January Session, 2009

Bill No. 6717

LCO No. 5812

05812_____

Referred to Committee on No Committee

Introduced by:

REP. DONOVAN, 84th Dist.

SEN. WILLIAMS, 29th Dist.

***AN ACT CONCERNING THE CAPITOL AREA DISTRICT HEATING
AND COOLING SYSTEM.***

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. (NEW) (*Effective from passage*) (a) The Commissioner of
2 Public Works, on behalf of the state, may purchase from TEN
3 Companies, Inc., in accordance with the Asset Purchase Agreement
4 dated November 4, 2008, by and among the state, acting by and
5 through the Commissioner of Public Works, and TEN Companies, Inc.,
6 which Asset Purchase Agreement is hereby ratified and approved, the
7 district heating and cooling system that provides heating and cooling
8 service to state facilities within the Capitol District and to other
9 nonstate facilities, as listed in the Asset Purchase Agreement dated
10 November 4, 2008, and which is known as the Capitol Area System,
11 including all assets and property necessary for the operation of said
12 system, as described in the Asset Purchase Agreement dated
13 November 4, 2008. The commissioner may assume all vendor
14 contracts, customer contracts, supplier agreements, and third-party
15 contracts with regard to said system. The commissioner may

16 undertake any obligation and enter into any agreement to accomplish
17 any transaction that is necessary to carry out the provisions of this
18 section or said Asset Purchase Agreement, including the grant or
19 acceptance of any release set forth in said Asset Purchase Agreement.

20 (b) To the extent any provision in an agreement executed or
21 assumed by the commissioner pursuant to subsection (a) of this section
22 may be interpreted as waiving the sovereign immunity of the state,
23 including, without limitation, indemnification provisions, such
24 provision is effective and enforceable against the state solely in
25 accordance with its specific terms. Nothing in this subsection shall be
26 construed as a waiver of the sovereign immunity of the state in any
27 other context.

28 (c) In order to operate the Capitol Area System, the commissioner
29 may: (1) Furnish, from plants located in the city of Hartford, heat or air
30 conditioning, or both, by means of steam, heated or chilled water or
31 other medium; (2) lay and maintain mains, pipes or other conduits; (3)
32 erect such other fixtures as are, or may be, necessary or convenient in
33 and on the streets, highways and public grounds of said city, for the
34 purpose of carrying steam, heated or chilled water or other medium
35 from such plants to the location to be served and returning the same;
36 and (4) lease to one or more corporations formed or specially chartered
37 for the purpose of furnishing heat or air conditioning, or both, one or
38 more of such plants or distribution systems owned by it and
39 constructed or adapted for either or both such purposes.

40 (d) The Commissioner of Public Works may perform all obligations
41 of the state relating to or arising from any agreement between the state
42 and TEN Companies, Inc.

43 (e) The Commissioner of Public Works may (1) enter into contracts
44 with third parties for the procurement of energy products and services
45 or for the operation and maintenance of, and repairs and
46 improvements to, the Capitol Area System; (2) provide energy
47 products and services, as produced from said system or distributed by

48 said system, to any buildings owned by, or leased to, the state or any
49 instrumentality of the state; (3) sell energy products and services, as
50 produced from said system or distributed by said system, to the
51 owners or tenants of buildings not owned by the state; (4) occupy and
52 use rights-of-way necessary to own, maintain, repair, improve and
53 operate said system in and on the streets, highways and public
54 grounds of the city of Hartford, on all property owned by the state and
55 on property where the system is located, and to serve public and
56 private end-use customers; (5) lay and maintain mains, pipes or other
57 conduits, and erect such other fixtures as are, or may be, necessary or
58 convenient in and on the streets, highways and public grounds of said
59 city, for the purpose of carrying energy products to the location to be
60 served and returning the same; and (6) enter into contracts with third
61 parties for the procurement of other products and services, and
62 provide or sell other products or services to the state or to the owners
63 or tenants of buildings not owned by the state, that are being
64 produced, provided or distributed through said system, or any part
65 thereof, prior to, or as of, the effective date of this section.

66 (f) The Commissioner of Public Works may: (1) Grant easements
67 with respect to land owned by the state in connection with the
68 operation of the Capitol Area System, subject to the approval of the
69 agency having supervision of the care and control of such land and the
70 State Properties Review Board; (2) acquire easements with respect to
71 land not owned by the state in connection with said system, subject to
72 the approval of the State Properties Review Board; (3) enter into leases
73 for any type of space or facility necessary to meet the needs of
74 operating said system, subject to the approval of the State Properties
75 Review Board; and (4) when the General Assembly is not in session,
76 the commissioner may, subject to the provisions of section 4b-23 of the
77 general statutes, purchase or acquire for the state any land, or interest
78 therein, if such action is necessary for the operation of said system. The
79 commissioner shall provide notice of any easement granted pursuant
80 to subdivision (1) of this section to the chief elected official of the
81 municipality and the members of the General Assembly representing

82 the municipality, in which such land is located.

83 (g) The Commissioner of Public Works may establish and
84 administer an account to be known as the Public Works Heating and
85 Cooling Energy Revolving Account, which shall be used for: (1) The
86 deposit of receipts from the sale of Capitol Area System energy
87 products and services to state agencies or to the owners or tenants of
88 buildings not owned by the state, and (2) for the payment of expenses
89 related to the operation, maintenance, repair and improvement of the
90 Capitol Area System. The commissioner may expend funds necessary
91 for all reasonable direct expenses related to said account.

92 (h) For the provision of energy products and services, the
93 Commissioner of Public Works shall periodically invoice and collect
94 rates from each state agency and owner or tenant of the buildings on
95 the Capitol Area System that are not owned by the state, to the extent
96 not prohibited by contracts in effect as of November 4, 2008. The
97 Commissioner of Public Works shall periodically submit proposed rate
98 setting methods and proposed rates to the Secretary of the Office of
99 Policy and Management for the secretary's approval. No such method
100 or rate shall be effective without the secretary's approval. Rates shall
101 be based on: (1) A pro-rata share of all costs of acquiring the system,
102 including all costs for legal and consultant services; (2) a pro-rata share
103 of the cost of such energy products or services, whether produced by
104 the state or purchased from third parties; (3) a pro-rata share of any
105 and all costs of operating, maintaining and repairing said system,
106 including the cost of services provided by vendors and the cost of
107 equipment; (4) a pro-rata share of an amount determined to be
108 necessary for long-term capital improvements or replacement, which
109 amount shall be specifically identified in the Public Works Heating
110 and Cooling Energy Revolving Account, and allocated for long-term
111 capital improvements or replacement; (5) a pro-rata share of the
112 Department of Public Works' personnel costs related to the operation,
113 maintenance, repair and improvement of the Capitol Area System,
114 provided not more than one full-time employee of the department

115 shall be allocated to the system; and (6) a pro-rata share of the cost of
116 other products or services incurred and permitted by this section. Not
117 more than forty-five days after receipt of such proposal from the
118 commissioner, the Secretary of the Office of Policy and Management
119 shall approve or disapprove of the proposed method used to calculate
120 rates and the type of expenses included. If the secretary fails to act on
121 the proposal during this period, the commissioner's proposal shall be
122 deemed to have been approved. On a quarterly basis, the
123 Commissioner of Public Works shall transmit to the General Fund any
124 portion of rates that are attributable to the provisions of subdivision (1)
125 of this subsection.

126 (i) Nothing in this section shall be construed to limit the use of the
127 Capitol Area System by the state to its use or functional capacity as of
128 the date of its purchase by the state.

129 (j) Except as expressly required by the provisions of this section, the
130 acquisition of the Capitol Area System by the Commissioner of Public
131 Works, and any transaction necessary for such acquisition, shall not be
132 subject to any other review, approval or authorization by any other
133 state agency, board, department or instrumentality and shall not be
134 subject to any otherwise applicable sales or conveyance tax or taxes.

135 (k) Nothing in this section shall be construed to prohibit the state
136 from reselling the Capitol Area System to a third party if it is
137 determined that such resale is in the best interest of the state.

138 Sec. 2. Section 3 of number 7 of the special acts of 1961, as amended
139 by special act 97-1, is amended to read as follows (*Effective from*
140 *passage*):

141 (a) Said corporation is authorized and empowered, either directly or
142 through the agency of its parent, a subsidiary or an affiliate: To
143 furnish, from plants located in the city of Hartford, heat or air
144 conditioning, or both, by means of steam, heated or chilled water or
145 other medium; to lay and maintain mains, pipes or other conduits, and

146 to erect such other fixtures as are or may be necessary or convenient in
147 and on the streets, highways and public grounds of said city, for the
148 purpose of carrying steam, heated or chilled water or other medium
149 from such plants to the location to be served and returning the same;
150 and to lease to one or more corporations formed under the general law
151 or specially chartered for the purpose of furnishing heat or air
152 conditioning, or both, one or more of such plants or distribution
153 systems, or both, owned by it and constructed or adapted for either or
154 both of such purposes.

155 (b) Said corporation or its parent or successor may sell to the state
156 the district heating and cooling system, known as the Capitol Area
157 System, that provides heating and cooling energy products or services
158 to buildings owned by the state and to privately owned buildings.
159 Such sale shall include all assets and property relative to or necessary
160 for the operation of said system, as described in the Asset Purchase
161 Agreement dated November 4, 2008, relating to such sale.

162 Sec. 3. (*Effective from passage*) (a) For the purpose of the sale provided
163 for in section 1 of this act, the purchase price for the Capitol Area
164 System and the assets and property of TEN Companies, Inc., related to
165 said system, as set forth in the Asset Purchase Agreement between
166 TEN Companies, Inc., and the State of Connecticut dated November 4,
167 2008, shall be ten million six hundred thousand dollars.

168 (b) The State Bond Commission may authorize the issuance of
169 bonds of the state in one or more series and in a principal amount in
170 the aggregate not exceeding ten million six hundred thousand dollars.
171 The proceeds of the sale of said bonds shall be used for the purpose of
172 acquiring the Capitol Area System, including all assets and property
173 relative to or necessary for the operation of said system, as described in
174 the Asset Purchase Agreement dated November 4, 2008.

175 Sec. 4. (*Effective from passage*) The State Bond Commission shall have
176 the power to authorize the issuance of bonds of the state in one or
177 more series and in a principal amount in the aggregate not exceeding

178 one million dollars for the transactional costs related to the purchase of
179 the Capitol Area System, as provided in section 1 of this act, including
180 the state's insurance costs, the state's legal fees, reimbursement to TEN
181 Companies, Inc. for prepaid property taxes, a reasonable amount for
182 start-up funding for the Public Works Heating and Cooling Energy
183 Revolving Account, as established in section 1 of this act, and for the
184 purchase and installation of pipe necessary for the operation of the
185 Capitol Area System, including the cost of pipe and its installation as
186 the interconnection between the supply and return lines of the Capitol
187 Area System at or near the point of interconnection between the
188 Capitol Area System and TEN Companies, Inc.'s other district energy
189 system located in the downtown area of the city of Hartford.

| | | |
|---|---------------------|--|
| This act shall take effect as follows and shall amend the following sections: | | |
| Section 1 | <i>from passage</i> | New section |
| Sec. 2 | <i>from passage</i> | Number 7 of the special acts of 1961, Sec. 3 |
| Sec. 3 | <i>from passage</i> | New section |
| Sec. 4 | <i>from passage</i> | New section |

| | | |
|-----------|---------------------|--|
| Section 1 | <i>from passage</i> | New section |
| Sec. 2 | <i>from passage</i> | Number 7 of the special acts of 1961, Sec. 3 |
| Sec. 3 | <i>from passage</i> | New section |
| Sec. 4 | <i>from passage</i> | New section |